

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 14, 2003

1:03 p.m.

**MEMBERS PRESENT**

Representative Mike Chenault, Co-Chair  
Representative Hugh Fate, Co-Chair  
Representative Beverly Masek, Vice Chair  
Representative Carl Gatto  
Representative Bob Lynn  
Representative Kelly Wolf  
Representative David Guttenberg  
Representative Beth Kerttula

**MEMBERS ABSENT**

Representative Cheryll Heinze

**COMMITTEE CALENDAR**

HOUSE BILL NO. 160

"An Act relating to the emission control permit program; relating to fees for that program and to the accounting of receipts deposited in the emission control permit receipts account; and providing for an effective date."

- MOVED HB 160 OUT OF COMMITTEE

HOUSE BILL NO. 163

"An Act relating to an annual wildlife conservation pass and the fee for that pass; relating to nonresident and nonresident alien big game tag fees; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 160

SHORT TITLE:EMISSION CONTROL PERMIT PROGRAM

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/05/03	0430	(H)	READ THE FIRST TIME - REFERRALS
03/05/03	0430	(H)	RES, FIN

03/05/03	0430	(H)	FN1: (DEC)
03/05/03	0430	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/14/03		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 163

SHORT TITLE:NONRES.GAME TAG FEES/WILDLIFE TOUR PASS

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/05/03	0433	(H)	READ THE FIRST TIME - REFERRALS
03/05/03	0433	(H)	RES, FIN
03/05/03	0433	(H)	FN1: (DFG)
03/05/03	0433	(H)	FN2: (DFG)
03/05/03	0434	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/05/03	0434	(H)	REFERRED TO RESOURCES
03/14/03		(H)	RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

ERNESTA BALLARD, Commissioner  
 Department of Environmental Conservation (DEC)  
 Juneau, Alaska  
 POSITION STATEMENT: Testified in support of HB 160.

TOM CHAPPLE, Acting Director  
 Division of Air and Water Quality  
 Department of Environmental Conservation  
 Anchorage, Alaska  
 POSITION STATEMENT: Assisted with presentation of HB 160 and  
 answered questions.

JOHN KUTERBACH, Program Manager  
 Air Permits  
 Division of Air & Water Quality  
 Department of Environmental Conservation  
 Juneau, Alaska  
 POSITION STATEMENT: Answered questions on HB 160.

TADD OWENS, Executive Director  
 Resource Development Council  
 Anchorage, Alaska  
 POSITION STATEMENT: Testified in support of HB 160.

CHARLOTTE MacCAY, Member  
 Air Permits Work Group  
 Anchorage, Alaska

POSITION STATEMENT: Testified on HB 160.

MARILYN CROCKETT, Deputy Director  
Alaska Oil & Gas Association  
Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 160, testified that following the work group's recommendations DEC will be able to maintain a high level of protection while concurrently making air permitting more attractive to developers and industry.

KEVIN DUFFY, Acting Commissioner  
Alaska Department of Fish & Game  
Juneau, Alaska

POSITION STATEMENT: Presented HB 163 on behalf of the governor.

MICHELLE SYDEMAN, Assistant Director  
Division of Wildlife Conservation  
Alaska Department of Fish & Game  
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 163.

ROBERT NAUHEIM, Assistant Attorney General  
Natural Resources Section  
Civil Division (Anchorage)  
Department of Law  
Anchorage, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 163.

KEVIN BROOKS, Director  
Division of Administrative Services  
Alaska Department of Fish & Game  
Juneau, Alaska

POSITION STATEMENT: Answered questions about vendors and permits proposed in HB 163.

WAYNE REGELIN  
Juneau, Alaska

POSITION STATEMENT: Offered background and reasons he believes HB 163 was introduced; suggested that Alaskans pay the fee as well, and that the effective date be January 1.

SARAH DUNLAP  
Juneau, Alaska

POSITION STATEMENT: Testified on HB 163 as co-owner of a small guiding business primarily involved in wildlife viewing; requested that the legislature move carefully and slowly; expressed concern about beginning midseason, requested an

exemption for areas under "fee demo programs," and highlighted the unfairness if the money mostly disappears into the general fund.

BOB JANES, Owner  
Gastineau Guiding Company  
Douglas, Alaska

POSITION STATEMENT: Expressed concerns about HB 163; didn't necessarily oppose a pass, but spoke against applying it just to commercial operators and questioned the fairness for smaller operators; suggested all visitors should get the pass, and perhaps residents should be considered as well; questioned where the funds will go and how this will be administered.

GEORGE H. REIFENSTEIN JR., General Manager  
Mount Roberts Tramway  
Juneau, Alaska

POSITION STATEMENT: Testified on HB 163, conveying concern about adding \$15 to the \$22 cost of a tram ride.

MARK MORONES, Communications Director  
Alaska Travel Industry Association (ATIA)  
Anchorage, Alaska

POSITION STATEMENT: Expressed concern that HB 163 will result in a negative image for the state and be difficult to administer and enforce; related ATIA's preference for a broad-based funding mechanism and said ATIA doesn't support the proposed wildlife conservation pass.

#### **ACTION NARRATIVE**

**TAPE 03-16, SIDE A**  
Number 0001

**CO-CHAIR HUGH FATE** called the House Resources Standing Committee meeting to order at 1:03 p.m. Representatives Fate, Chenault Masek, Gatto, Lynn, and Wolf were present at the call to order. Representatives Guttenberg and Kerttula arrived as the meeting was in progress. Representative Heinze was excused.

#### **HB 160-EMISSION CONTROL PERMIT PROGRAM**

CO-CHAIR FATE announced that the first order of business would be HOUSE BILL NO. 160, "An Act relating to the emission control permit program; relating to fees for that program and to the accounting of receipts deposited in the emission control permit receipts account; and providing for an effective date." [HB 160

was sponsored by the House Rules Standing Committee by request of the governor.]

Number 0134

ERNESTA BALLARD, Commissioner, Department of Environmental Conservation (DEC), testified, noting that John Kuterbach, Program Manager, Air Permits, Division of Air and Water Quality, and Tom Chapple, Acting Director, Division of Air and Water Quality, were present to answer questions but would have to leave later in the afternoon due to another commitment.

COMMISSIONER BALLARD talked about Governor Murkowski's commitment to enhancing Alaska's economy through resource development and his equal commitment to protecting Alaska's environment. She said it is not an either/or proposition; a strong economy will generate the revenue base to continue funding the important regulatory programs.

COMMISSIONER BALLARD said that without a strong economy, one cannot hope to have a strong government. She explained that over the last 30 years, [the state] has learned much about the environmental and health hazards associated with air pollution; much had also been learned about emission-control technologies, air modeling, and the need for and nature of ambient air-protective standards. Through national and state legislation, the shared value for environmental protection for citizens has been recognized, along with many other core values that form the framework for government regulatory programs. Environmental protection is not incompatible with resource development, she suggested; rather, it is as fundamental a component of resource development as are labor and worker safety laws.

Number 0335

COMMISSIONER BALLARD said Governor Murkowski and members of his cabinet recognize that Alaska's laws form the framework for a successful resource development strategy. Environmental laws are one of the equally important pieces of public policy. She said this bill will improve the process and the function of underlying state policy to protect the environment. It does change the protective standards already in place and administered by the department through existing regulation, she explained. Through DEC's fiscal year 2004 (FY 04) budget, it intends to sharpen its focus on the core permitting and protection responsibilities. She said HB 160 is essential to

achieving the results promised in [the governor's] budget proposal.

COMMISSIONER BALLARD noted that she had made a commitment to the committee and each member personally to revisit [DEC's] core mission of developing protective standards and implementing them through efficient and fair regulations. She said this bill is essential to her success in that undertaking.

Number 0423

COMMISSIONER BALLARD said this legislative proposal is based on two important developments of the several years. One was a benchmark study conducted in the department over the last two years; the study reviewed funding and workforce allocation in air programs of states that are considered comparable in workload and complexity to Alaska. States compared with Alaska were Colorado; New Mexico; California, which has two different air quality programs because they're organized in air districts; Oklahoma; Montana; Vermont; Washington; and Oregon. She said states with small populations were chosen, as well as states with resource development activities similar to [Alaska's], although there is nothing comparable to Alaska.

Number 0494

COMMISSIONER BALLARD explained that it was felt that these states formed a similar benchmark group. Alaska has an unusual air [control] program, she explained. Although the state has a small population, it has a high number of air permits - as many operating permits as Colorado and as many new major permits as New Jersey. She explained that this is because Alaska doesn't have a power grid and thus has a far greater dependence on diesel generation and a modern, well-organized air program. It was discovered during the benchmark study that [DEC] hadn't funded, staffed, or organized the program adequately to do the job that the applicants expect. Commissioner Ballard said HB 160, and the program increase proposed by the department in the governor's budget, will allow DEC to remodel the permit program in line with the successful programs in other states.

Number 0577

COMMISSIONER BALLARD explained that the second development that guided DEC's proposal for FY 04 and for the development of this legislation was the Air Permits Work Group, a stakeholder group convened by the department last year. The work group carefully

reviewed DEC's program against the federal Clean Air Act and against the EPA [Environmental Protection Agency] rules that have been amended several times in recent years, establishing new programs and control concepts.

COMMISSIONER BALLARD reported that the state permitting program hasn't kept pace with the national regime or with the needs of Alaskan communities and industries. Noting that the work group report is in the bill packet and that recommendations are incorporated into HB 160, she offered her belief that this bill will create a predictable, timely, and rational permitting program. It will allow the regulation of minor sources by standardizing permit conditions that are based on best management practices. For example, the department currently has a permit program that is a "self-management - implementing best practices program" for oil drilling rigs, and wants to expand it to include more situations. For Alaska's population size, there are many more mobile and portable plants and machinery than in most states. She said the [department] needs the tools to work with this unusual but essential fleet. The bill will also exempt sources from permitting to the extent allowed under federal law, and it will achieve efficiency through adopting several rules by reference.

Number 0778

COMMISSIONER BALLARD said there are many changes that [DEC] is proposing to change the terminology in state statute; those are essential to reflect federal terminology. If a federal rule is adopted using a term of art and Alaska's statute uses a different term for the same thing, that rule can't be adopted easily; the [department] has to go through a more elaborate rule-making process. Commissioner Ballard said this is time consuming and does not give the advantage that "we believe our permitting applicant's deserve." The efficiency that [the department will achieve] will also make it easier for the permitting of rural power plants in the state's small, outlying Bush communities, she explained. She said the [department] will be able to use the so-called "clean unit test" to avoid what is done now, which is a detailed, site-by-site technology analysis.

Number 0778

COMMISSIONER BALLARD addressed the fiscal note and said the bill itself does not warrant an increase in staffing; however, without additional staff as proposed in [DEC's] budget for FY 04, the important statutory changes that will be achieved

through the legislation cannot be delivered because [the department] will not have adequate staff to implement them. In order to operate an air permitting program that issues timely permits, [DEC] has requested additional staff through the budget process, she explained.

COMMISSIONER BALLARD said that, in the spirit of full disclosure, the entire permit increment was put in this fiscal note and the box was checked which stated that this amount is [included] in the governor's FY 04 proposal. Therefore, the fiscal note represents the cost for reinvigorating the entire air-permitting program for the state. She told members that while there is an increase in this very important program, other services in the department have been reduced, so that only services essential to [the department's] mission of protecting public health and the environment are being provided. With this increment, as well as several other small increases in core permitting programs, the department still has an overall net reduction of 13 full-time equivalent (FTE) employees and \$153,000. She said she was pleased to bring forward a true example of what permit streamlining will look like. Commissioner Ballard told the committee that [HB 160] represents an effort to truly take advantage of "all of the tools in the federal tool box," to the benefit of state permit applicants.

Number 0964

REPRESENTATIVE GUTTENBERG observed that the work group's final report was very helpful and informative.

Number 1009

TOM CHAPPLE, Acting Director, Division of Air and Water Quality, Department of Environmental Conservation, testified, noting that Commissioner Ballard had given a good overview of the bill. He mentioned that there are a lot of changes in definitions that take advantage of the federal program. Mr. Chapple said the sectional analysis provides a helpful "walkthrough" of the bill. He offered to meet with committee members to help in their understanding [of the changes].

Number 1068

REPRESENTATIVE KERTTULA referred to changes in the definitions section and asked what's happening with stationary sources versus mobile sources. She also asked if the mobile sources are



covered or if they are somehow removed from the permitting process.

MR. CHAPPLE said the bill doesn't change the system. This bill and the permitting program are designed principally for stationary sources, he explained. Sources like oil drilling rigs, asphalt plants, or soil-remediation units move around and have been under state permit for a number of years, and will continue to be so. The cutoffs for the size of the facility that will be permitted won't change; however, some of those currently listed in the "major source" category will be moved to the newly created "minor source" permitting program for which there is hope to accomplish more streamlining.

REPRESENTATIVE KERTTULA observed that "reconstruction" doesn't seem to be included in the list of permits requiring a construction permit. Therefore, she asked how reconstruction situations will be addressed. She asked whether it will be picked up in federal language.

MR. CHAPPLE deferred to Mr. Kuterbach.

Number 1223

JOHN KUTERBACH, Program Manager, Air Permits, Division of Air & Water Quality, Department of Environmental Conservation, explained that the term "reconstruction" wasn't used because it isn't found in federal law for major source permits. Under federal law, "reconstruction" is used to qualify changes at a facility as a new facility. Therefore, the concept of reconstruction would be carried through, although the term itself wouldn't.

REPRESENTATIVE KERTTULA asked if the lack of the term "reconstruction" would result in any change in the current manner in which review occurs. She asked, "Would we drop anything out?"

MR. KUTERBACH answered that currently reconstruction at the federal level is under review, and some of the recently adopted federal rule changes were intended to clarify what is reconstruction versus routine maintenance. The state would follow suit with those federal changes, and thus that change would be reflected in the state's program. In further response to Representative Kerttula, Mr. Kuterbach explained that a reconstruction is a replacement of components at a facility without necessarily increasing emissions. However, a

modification is an increase in emissions, and thus the [department] would continue to regulate the modifications.

Number 1354

REPRESENTATIVE KERTTULA turned to Section 23, which says adjudicatory hearings will only be allowed if a public hearing process is required or solicited. She asked if anything is being lost with the aforementioned language.

MR. KUTERBACH specified that current law provides that anyone who wanted to appeal a decision made by the department [on a permit] must have provided comment during the time a permit was out for public review. He pointed out that another part of HB 160 gives the department discretion for minor sources for which the department may choose not to have a public review. Therefore, Section 23 specifies that [the department] isn't removing the right of an individual to appeal a departmental decision if there wasn't a comment period.

Number 1539

TADD OWENS, Executive Director, Resource Development Council (RDC), began by informing the committee that RDC is a statewide nonprofit trade association that represents Alaskan individuals and companies in the mining, oil and gas, timber, tourism, and fisheries industries. The mission of RDC is to help grow Alaska's economy through the responsible development of the state's natural resources. Mr. Owens said that while RDC didn't formally participate in the work group referenced by Commissioner Ballard, several of RDC's members were directly involved in the process.

MR. OWENS reported that RDC is very pleased that the administration and DEC have come forward with this legislation, which is the implementation of many of the work group's recommendations. The RDC believes that HB 160 is a very important part of a comprehensive effort to streamline the state's permitting regime. He noted that RDC has worked closely with DEC and the legislature over the years in regard to streamlining fees and making permit fees more predictable. Furthermore, RDC has worked to move permitting toward general permits based on best management practices, as well as to move the agency toward consistency with federal requirements. As has been stated, HB 160 achieves progress on all of the aforementioned fronts, he told members. Therefore, RDC strongly supports HB 160.

Number 1662

CHARLOTTE MacCAY, Member, Air Permits Work Group, began by informing the committee that the work group emphasized the need for air permitting that is more simplified, timely, and predictable. This legislation removes the necessary obstacles in order to allow DEC to follow the work group's recommendations. However, the work to reconstruct is yet to be done, and the (indisc.) will help enable this process to continue. Ms. MacCay noted that DEC has been very open and receptive to the outside suggestions that the work group has been making. She related her belief that following the work group's recommendations DEC will be able to maintain a high level of protection while concurrently making air permitting more attractive to developers and industry.

Number 1724

MARILYN CROCKETT, Deputy Director, Alaska Oil & Gas Association (AOGA), noted that AOGA is a trade association whose members represent the majority of the oil and gas activity in the state. She informed the committee that AOGA was a participant in the work group process and supports the recommendations coming out of that process. Ms. Crockett mentioned that AOGA is in the process of thoroughly analyzing HB 160 and was recently involved in a meeting held by DEC to discuss the intent behind the changes, which AOGA supports. She said DEC has done a good job putting down on paper the changes necessary to get the state's program to look more like a federal program, to make it easier to administer, and to reduce the burden on the department as well as the permittees. From that perspective, Ms. Crockett said that AOGA supports the intent of HB 160, although it will continue to review it and participate in future hearings.

Number 1862

REPRESENTATIVE KERTTULA directed attention to Section 17, page 9, and relating her understanding that it deletes the portion of the statute requiring the permit to be issued before operation. Furthermore, Section 17 seems to allow a 12-month operation before obtaining a permit for stationary source. She asked if that's correct, or whether another section in federal law requires that the permit be obtained before operating.

MR. KUTERBACH explained that the current federal law for major operating permits doesn't require that the permit be issued

before the source can begin operation; rather, it allows for 12 months of operation to issue the permit. The federal major-source operating permit does not authorize new pollution, but merely collects existing requirements into a legal document. [Alaska's] current statute established an additional deadline - beyond federal law - for application for an operating permit, not for issuance of an operating permit.

MR. KUTERBACH said the proposal is to eliminate the additional application deadline that is currently in statute but not in federal law, because with the change to the minor source program, virtually all the major source operating permit facilities first will have to obtain a construction permit. Therefore, there is no need for an advanced application deadline for those facilities. In further clarification, Mr. Kuterbach specified that any entity [in those classified facilities] that is [producing] new pollution will have to obtain either a major or minor permit; for those, the authorization would be before the new pollution happens. For an existing, operating minor source, the department doesn't see the need to have that [authorization] before operation.

Number 2031

REPRESENTATIVE KERTTULA highlighted that a construction permit would have to be obtained before building the plant. The [department] is just addressing the operating aspect for the air.

MR. CHAPPLE said that is true. He pointed out that in Alaska [a source of pollution] that is large relative to the amount of pollution a year is required to obtain a permit, while [smaller entities relative to the amount of pollution] aren't required to do so. He explained that every state is obligated to determine what size of sources will cause an air quality problem. He related that in California, small sources of pollution such as lawnmowers and household furnaces are regulated, while Alaska's regulation targets larger sources of pollution. For those sources that look large enough to necessitate obtaining a permit [under the existing statutes], under the proposed changes the construction permit would still be required, as would the operating permit.

Number 2087

REPRESENTATIVE MASEK referred to a memorandum from the commissioner of [DEC], which she quoted as follows: "Our state

permitting program has not kept pace with the national regime or the needs of the Alaskan community or the industry." She asked about the size of the backlog with this permit program.

MR. CHAPPLE answered that the department hasn't been able to issue permits in the timeframe that it believes to be responsible for business or community needs. In a multi-year average for a construction permit, it takes 254 days to issue a permit. The department believes that those permits should be issued in 90-110 days. Furthermore, the EPA has notified Alaska that Alaska isn't meeting the schedule for the relatively new federal requirement for operating permits. He noted that the department is under a commitment to complete all outstanding permits by November 2003. Alaska is one of several states that are lagging behind.

Number 2180

REPRESENTATIVE MASEK asked what industries HB 160 would impact beyond the construction industry, the oil industry, and the rural power plants.

MR. CHAPPLE said Representative Masek had identified the largest entities impacted by this legislation. He pointed out that most facilities in Alaska burn fuel and thus cause a large enough emission to require a permit. He noted that all of the rural hubs have power plants large enough to be identified as major sources. The smaller rural communities are a mixed bag. He mentioned that any significant seafood processing plant has diesel-powered generators and other heat sources. Most mines in Alaska have to generate their own power, and thus mines have large enough power plants to require permits. He said that Mr. Kuterbach could describe the size of communities that are generally small enough that a permit isn't required and those communities that are large enough and thus require a permit.

REPRESENTATIVE MASEK asked if, after the passage of HB 160, Alaska would face any federal Clean Air Act or EPA rules and thus more changes to the existing law would be required.

MR. CHAPPLE answered that the statutory changes have been reviewed [and constructed] such that the statute would provide the ability to adopt federal regulations and do so in a streamlined manner. He related his expectation that there will be other federal regulation changes. For instance, there are a number of industrial classifications that the EPA will be reviewing due to its obligation under the Clean Air Act. Some

of those industrial classifications will impact sources in Alaska. Therefore, there will be new federal rules, he said.

Number 2315

REPRESENTATIVE GATTO highlighted that the word "contaminant" had been replaced by the word "pollutant". He asked about the definition of pollutant.

MR. KUTERBACH explained that the federal definition is that pollutants are basically those compounds regulated under the Clean Air Act. He said [the federal government regulates] pollutants; he mentioned that there are six actual compounds, and indicated 189 hazardous air pollutants are listed in the Act. Thus [pollutants] are a well-defined set of chemical compounds.

Number 2395

REPRESENTATIVE GATTO inquired as to what happens as more [pollutants] are discovered. For example, if an individual generates a pollutant that has never been identified, would that pollutant have to be added to the list and be approved, and meanwhile, could the pollutant be generated freely until added to the list? Or is the pollutant covered until it's excluded?

MR. CHAPPLE responded that the statute would allow the department to adopt changes that are necessary when the EPA has defined a new pollutant. Mr. Chapple said, for these 189 hazardous air pollutants, that the EPA hasn't set what are safe or hazardous levels to breathe, which it has for pollutants such as sulfur dioxide and carbon monoxide. He explained that sometimes the EPA takes a different approach: it suspects a compound to be a carcinogen and there is fairly good medical data to show that it's a carcinogen, and thus the EPA establishes emission limitations for certain types of operations that emit or process that [carcinogen]. When the EPA adopts those new emission rules, this statute and the existing law would allow Alaska to implement those requirements because they are federally mandated and the state is obligated to implement them. That would occur without another statutory change, he noted.

MR. CHAPPLE highlighted that if Alaska is going to do something different from federal law, there is a provision in current law that places certain requirements on the department to show that there is a compelling scientific need to do it and that the work

done by the department is peer-reviewed by another entity before an action is taken.

Number 2523

REPRESENTATIVE GUTTENBERG turned to Section 30 and asked how Title 5 defines "small business."

MR. CHAPPLE answered that generally "small business" is defined as 25 employees or less, and there may be other requirements linked to the definition. He noted that current statutes and this legislation provide certain free services for small businesses. When the statute was adopted originally in 1993, he said Alaska thought it was necessary to have the small-business assistance program efforts available for small rural communities; however, most rural communities don't qualify because they are a government [entity].

Number 2600

REPRESENTATIVE WOLF moved to report HB 160 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 160 was reported from the House Resources Standing Committee.

The committee took a brief at-ease at 1:41 p.m.

#### HB 163-NONRES.GAME TAG FEES/WILDLIFE TOUR PASS

CO-CHAIR FATE announced that the final order of business would be HOUSE BILL NO. 163, "An Act relating to an annual wildlife conservation pass and the fee for that pass; relating to nonresident and nonresident alien big game tag fees; and providing for an effective date."

Number 2657

KEVIN DUFFY, Acting Commissioner, Alaska Department of Fish & Game (ADF&G), announced that he was presenting HB 163 on behalf of the governor. He explained that HB 163 establishes requirements for nonresidents; he mentioned commercial providers of opportunities to view wildlife and obtaining a wildlife conservation pass. Noting that the cost of the annual pass is \$15, he said this legislation also raises nonresident and nonresident alien big-game tag fees for moose, caribou, sheep, and goats. With regard to the wildlife pass, nonresidents under age 16 and all nonresidents who hold any Alaska hunting or

fishing license prior to utilizing the commercial viewing service will be exempt from purchasing this pass. The \$15 fee is estimated to raise approximately \$7 million annually, he related.

ACTING COMMISSIONER DUFFY informed the committee that the department would like to work with the administration and the legislature to secure a portion of these funds for use, in part to match significant new federal dollars coming to Alaska through state wildlife grant programs. Currently, Alaska's federal funding for these programs amounts to around \$3 million.

ACTING COMMISSIONER DUFFY reported that during the last session of Congress, then-U.S. Senator Frank Murkowski and U.S. Representative Don Young sponsored legislation known as the Conservation and Reinvestment Act (CARA), to provide a new and stable source for fish and wildlife management. In response to this, he said, new federal dollars are coming to Alaska. He noted that last year the state received approximately \$4 million in the new state wildlife grant funding source; this year the state will receive around \$3 million. He pointed out that the federal dollars must be matched one-to-one with state dollars.

Number 2780

ACTING COMMISSIONER DUFFY expressed hope that HB 163 is the vehicle, because [the department] believes this legislation provides a way for visitors who use and enjoy Alaska's wildlife - but don't purchase a hunting or fishing license - to help support this program and ensure that Alaska maintains healthy and productive wildlife populations. This legislation requires visitors who take a commercial tour in order to view wildlife to purchase an annual wildlife conservation pass. The funds from the pass will be placed in a special account in the general fund, and therefore may be appropriated for fish and wildlife management, viewing, and educational programs.

ACTING COMMISSIONER DUFFY highlighted that the billion-dollar tourism industry draws substantial revenue each year for marketing Alaska's wildlife. Therefore, he opined that it's only fair for visitors and the industry that most directly benefits from [the fish and wildlife populations] to help sustain those populations. The department believes that most visitors will be happy to know that they're making a contribution to wildlife conservation in Alaska, he added.

Number 2861



REPRESENTATIVE WOLF recalled that the tourism industry projected two years ago that the state could have 1.6 million visitors come to Alaska. He related his understanding that HB 163 would impose a viewer fee on those taking tours. He asked whether [this fee would be imposed on those] taking charters. He also inquired as to [whether this fee would be imposed on those] enjoying wildlife on the road from their recreational vehicles (RVs).

ACTING COMMISSIONER DUFFY explained that the commercial operators are the ones that [the department] is trying to work with in order to generate this revenue for the state. Therefore, those traveling through the state via an RV wouldn't be required to [pay this fee].

REPRESENTATIVE WOLF asked if there is a way to include broader participation [in the proposed fee].

ACTING COMMISSIONER DUFFY indicated the department would be willing to work with the legislature to "cast a wider net."

Number 2955

REPRESENTATIVE LYNN asked if any consideration was given to a reduced fee for children, seniors, and disabled individuals.

ACTING COMMISSIONER DUFFY answered that he believes residents under 16 are exempt from this fee, as are those [60] or older and those who purchase a hunting or fishing license. In further response to Representative Lynn, Acting Commissioner Duffy said he believes the current construction of HB 163 would require nonresident seniors to pay this proposed fee.

CO-CHAIR FATE inquired as to the use of the CARA funds.

**TAPE 03-16, SIDE B**

Number 3011

MICHELLE SYDEMAN, Assistant Director, Division of Wildlife Conservation, Alaska Department of Fish & Game, answered that [CARA funds] are used for wildlife recreation, primarily wildlife viewing, as well as wildlife-related educational programs in the schools and community. Those funds also go toward the conservation of species that aren't hunted, trapped, or fished. The [federal CARA] legislation was to provide funding for nontraditional wildlife programs not currently

funding with the Pittman-Robertson funds or license fees that are now collected.

REPRESENTATIVE GUTTENBERG turned attention to a document in the committee packet entitled "Background on H.B. 163 and S.B. 122: An act relating to an annual Wildlife Conservation Pass". The second paragraph of that document read:

For nearly a century, hunters and anglers have borne most of the cost of wildlife management. While they are willing to pay their fair share to conserve wildlife populations, many have asked why other wildlife enthusiasts have not stepped up to the plate.

REPRESENTATIVE GUTTENBERG said he thought the aforementioned to be commendable, but didn't see HB 163 supporting those efforts because the [proposed] fee is placed in the general fund; furthermore, there aren't any wildlife conservation proposals on the table. However, there do seem to be folks lining up for money for programs that aren't wildlife conservation programs.

ACTING COMMISSIONER DUFFY acknowledged that there is a wider range of usage of these fees. However, [the department] anticipates that a certain portion of these fees would return to the Division of Wildlife Conservation and specifically be used as a match for federal money received for these wildlife viewing programs. The match is required in order to expend the federal funds, he noted.

Number 2895

REPRESENTATIVE GUTTENBERG remarked that the operative word is "may". He asked if there have been any proposals for funding wildlife conservation efforts.

ACTING COMMISSIONER DUFFY replied no, and explained that HB 163 was developed as part of revenue-generating measures that the governor believes to be appropriate for the state. With regard to whether the [department] has incorporated this into fiscal notes for fiscal year 2004 [FY 04] in the division, that hasn't been done yet, he specified. However, that is anticipated, depending upon the outcome of HB 163.

Number 2850

REPRESENTATIVE GUTTENBERG noted that fish anglers and many other [groups involved in the fishing industry] have representation on

the [Board of Fisheries and the Board of Game], which manage the resources. Therefore, he inquired as to why, on the boards, there isn't a group representing nonconsumptive users who are now being asked to pay a fee to use the state facilities. Representative Guttenberg reminded members that this nation began with the notion of no taxation without representation, and questioned how that relates to HB 163.

ACTING COMMISSIONER DUFFY said, with regard to representation on the Board of Game, that dialogue often occurs between the administration and the legislature. He stated that he didn't believe a discussion of the representation of the Board of Game relative to HB 163 was appropriate.

Number 2779

REPRESENTATIVE WOLF offered his belief that the Board of Game includes a member representing nonconsumptive use. He asked whether there is any wildlife animal that isn't hunted or trapped in Alaska. He also asked whether this will continue to promote the educational programs currently established within ADF&G. Referencing an unspecified person who he said does a fantastic job working with grade school children, he asked whether this will continue to promote that person's program.

MS. SYDEMAN replied that the hope is to enhance those educational programs, which work hand in hand with the needs of [ADF&G's] biologists and wildlife managers. For instance, if a moose population is in decline in a particular area, the biologist may believe it would be helpful for people there to understand that if they don't hunt cow moose for a certain number of years, it will help the moose population to recover. That is the kind of thing for which this educational program is intended, as well as to continue programs in the schools, she added.

REPRESENTATIVE WOLF spoke positively of two unspecified programs in the department currently managed for both fish and game.

Number 2675

REPRESENTATIVE GUTTENBERG mentioned a supreme court case about the differential between resident and nonresident hunting, suggesting that the state is looking at a huge liability. He asked whether there is any similarity here, since residents aren't being charged the same as nonresidents.

Number 2617

ROBERT NAUHEIM, Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, replied that he thinks there is. He cited what he suggested is a very helpful case, Shepherd v. State, Dep't of Fish & Game, a [1995 Alaska Supreme Court] case that challenged the statutory preference for resident hunting of moose, elk, and deer. He said it addressed whether that kind of resident preference was permissible under the "privileges and immunities" clause of the U.S. constitution and the commerce clause, as well as several provisions of the Alaska constitution, including the equal protection or equal rights clause and the equal application clause.

MR. NAUHEIM explained that the court upheld that statute. The essential holding with respect to the state constitutional issues was this: residents and nonresidents aren't similarly situated with respect to access to recreational use of fish and game. The court declined to pursue any further analysis and said the state can make distinctions between residents and nonresidents for purposes of recreational access to fish and game; it also noted that Article VIII, Section 2, of the constitution seems to impose "a kind of obligation for the state, in some cases, to require a preference, especially when there's a shortage." He said the case doesn't specifically address a shortage, but that he thought mentioning that provision was helpful.

Number 2522

MR. NAUHEIM, with respect to federal constitutional issues, reported that the court [in Shepherd] ruled that "articles of unharvested fish and game" not destined to be articles bought and sold in interstate commerce aren't subject to the kind of analysis imposed by the court on laws that seem to discriminate against interstate commerce. It essentially held that unharvested moose and game aren't articles of interstate commerce.

Number 2457

MR. NAUHEIM suggested that an argument made by the guides [in Shepherd] has some degree of relevance with respect to this bill. He explained:

It addressed an argument made by the guides that because there was a disparate opportunity for residents and nonresidents, ... any kind of burden that it placed on the guides in terms of their business - hurting their business if they ... catered to nonresidents - was a de minimis kind of burden and incidental, and so long as the state was attempting to address a scarcity or some other reasonable objective - reasonable state interest - that kind of discrimination wasn't fatal to the law.

MR. NAUHEIM told members that the provision raised most often in these kinds of cases is the privileges and immunities clause. He reported that the Baldwin case - a U.S. Supreme Court case well known to "fish and game" attorneys - said that a state can distinguish between residents and nonresidents for purposes of recreational access to fish and game; it did so on the basis that the privileges and immunities clause of the federal constitution was designed to protect those kinds of essential activities or basic rights that are necessary to maintaining a union of states, and it specifically found that hunting game such as elk is not one of them. Mr. Nauheim added, "Our supreme court relied specifically on that case to hold that our preference for residents, in the case of certain big-game hunting, was ... sustainable, was permissible under that constitutional provision under Baldwin."

Number 2364

REPRESENTATIVE KERTTULA asked whether, in terms of viewing, this is really talking about tourism. She also asked, "Aren't Alaskans just as similarly situated as nonresidents, and isn't that where we're going to really have our problem? ... That's interstate commerce. And then we get shifted into a whole more difficult analysis, don't we?"

MR. NAUHEIM acknowledged that as one argument, but said he thinks the bill's real purpose is to equalize costs borne by residents and nonresidents. He offered his understanding of the policy objectives of the administration and ADF&G to be this: the \$15 fee reflects a difference in the amount the state can be viewed as spending on residents versus nonresidents. He said nonresidents [currently] don't pay anything unless they buy a hunting or fishing license, for example, and yet there are costs associated with managing fish and wildlife populations so that they're healthy, and there is what he called the "incidental benefits of viewing them" for both Alaskans and non-Alaskans.

MR. NAUHEIM noted that Alaskans do pay for government services by virtue of the stream of oil taxes and other user fees that the state charges and then allocates [through the general fund]. He cited the Carlson case as upholding "those kinds of efforts to equalize the costs that are borne by residents, through the diversion ... of various revenues from the general fund, and ... has allowed the state to take those into account ... in looking at how the costs of providing ... for fish and wildlife opportunities is borne."

Number 2222

MR. NAUHEIM said he realizes separate treatment for residents and nonresidents does raise constitutional issues, especially with respect to the commerce clause. He expressed confidence about advancing a vigorous case if it is challenged, but acknowledged that there is no guarantee of the outcome, especially for constitutional issues in a new area. Noting that he wasn't aware of another instance in the country of an attempt to assess [a fee for] a license for wildlife viewing, he concluded by saying, "That's not to say that some of these principles wouldn't apply with equal force. But it is ... admittedly sort of a foray into a new area."

Number 2176

REPRESENTATIVE KERTTULA noted that she wasn't up on the most recent permutation of the Carlson case, but requested confirmation that the state has gone through quite an onerous burden trying to justify the differential [between residents and nonresidents]. Observing that the case has been around for years, she asked, "That's just a risk, am I right?"

MR. NAUHEIM replied that he thinks it's a fair assessment. For the bill, he suggested there are two advantages. First, it isn't directly taxing a commercial operation, but is assessing a user fee for those nonresidents who view wildlife, with an enforcement mechanism through the use of commercial providers; and, second, this bill doesn't have the fee disparity present in the Carlson case, which involved taxing of a commercial activity - commercial fishing - and in which the fee disparity was in the hundreds of dollars. He acknowledged that if this case went to court, the litigation could have a significant cost.

Number 2083

REPRESENTATIVE KERTTULA said she understands the arguments on how [the state's] oil money goes towards roads and infrastructure, for example, and thus can be counted as if it were a tax on Alaskans. However, she questioned what Alaskans pay specifically for [wildlife] viewing and how treating nonresidents differently can be justified. She clarified that she doesn't want to pay for being able to see wildlife, but is concerned about what will happen if this is imposed on nonresidents. She noted that under previous cruise ship legislation, the proposed head tax clearly was on everybody, which is how constitutionality problems were avoided. She thanked Mr. Nauheim for his analysis.

Number 2022

REPRESENTATIVE GUTTENBERG referred to page 4, Section 7, which indicates the commissioner may appoint agents. Noting that only one part-time employee is being added, he asked whether that same person would [be responsible for] Ketchikan, Anchorage, and Fairbanks, for example.

ACTING COMMISSIONER DUFFY answered:

We already have, under our current structure, about 1,600 licensed vendors statewide. A number of those people would be used [for] this program. So what we're trying to do from our side of the equation is, in terms of the personnel to do the specific administrative structure, we're trying to keep that to a minimum. That's why you have one part-time person reflected in there. But we already have a structure in place for the hunting licenses, and we anticipate using a similar structure ... on this wildlife-viewing fee.

Number 1955

REPRESENTATIVE GUTTENBERG noted that people might board a cruise ship in Seattle and not get off until reaching Juneau, or might fly to Fairbanks and board a tour bus. He asked where the infrastructure would be built to collect the fees from people who don't interact with hunting and fishing license vendors.

Number 1900

KEVIN BROOKS, Director, Division of Administrative Services, Alaska Department of Fish & Game, replied that although the

expectation is to add some vendors such as cruise lines or tour operators, the department would try to incorporate this into the existing fish-and-game licensing system, which involves 1,500-1,600 vendors as well as significant sales over the Internet.

REPRESENTATIVE KERTTULA asked whether Mr. Brooks has worked with the tourism industry on this, and how they feel about it.

MR. BROOKS, noting that the genesis of the bill was fairly recent, said, "We have not had any discussions with them to date." He offered the expectation, if the bill moves forward, that discussions would have to occur.

Number 1817

REPRESENTATIVE KERTTULA expressed concern about how the effective date would impact the industry if this passes. She related her understanding, from speaking with people from the department, that [ADF&G] isn't averse to pushing that [date] forward so companies won't have to charge people who have already booked [tours] this year more money.

MR. BROOKS replied that if the bill [passes], the department will have to order stock and do many things to gear up. Pointing out that someone who holds a fishing or hunting license is exempt from this, he said about 300,000 residents and an equal number of nonresidents currently buy those types of licenses. He added, "Yes, there will take some rollout, and you could set a date at some time in the future that it might be a smoother rollout, but I think we could put some efforts forth to get it implemented ... this summer season coming up." He acknowledged that it will take some work, and that there will be a transition period. Noting that he couldn't speak to how enforcement would occur in the first year, he surmised that "as we're ramping up and getting stock out, ... there's got to be some consideration given that it's a brand-new program."

Number 1729

REPRESENTATIVE GUTTENBERG asked how much in fees ADF&G envisions collecting.

MR. BROOKS offered his belief that the fiscal note contained an estimate based on the number of visitors minus the number who currently buy fishing and hunting licenses. After being handed a copy of the fiscal note, he paraphrased parts of the analysis, which read [original punctuation provided]:



Annual revenue estimates are based on the following assumptions:

1) About 1.2 million nonresidents will travel to Alaska as tourists in FY04. Of these about 300,000 will purchase a hunting, fishing or trapping license and therefore would not be required to purchase an annual Wildlife Conservation Pass. Of the remaining 900,000 nonresidents (some of whom are under the age of 16), we project that approximately 500,000 would purchase the pass, generating about \$7.5 million in revenue.

2) We project that the number of pass purchasers will increase by an estimated 5% annually based on current tourism trends.

MR. BROOKS explained that ADF&G also had made efforts to determine [the number of] people between the ages of 16 and 60, which is really the target, since people younger than 16 and older than 60 wouldn't need to buy this [pass].

Number 1588

WAYNE REGELIN testified on his own behalf, noting that he'd recently retired from ADF&G, where he served for eight years as the director and six years as the deputy director of the Division of Wildlife [Conservation]. Saying he has been working on this legislation at both the federal and state level for a long time, he offered some background to explain why, in large part, he believes the bill was introduced.

MR. REGELIN reported that in fiscal year 2001 (FY 01), Congress began providing funds to all state fish-and-wildlife agencies for the purposes of fish-and-wildlife education; management of species that are hunted, trapped, or fished; and wildlife-viewing programs. The International Association of Fish and Game Agencies led the efforts to secure this funding, he said, and Alaska had a significant role in getting this legislation through Congress, since Congressman Don Young was the prime sponsor in the U.S. House of Representatives and then-U.S. Senator Frank Murkowski was the prime sponsor in the U.S. Senate; they chaired the main committees of referral for the federal legislation. Mr. Regelin said he'd worked closely with the association and Alaska's congressional delegation to obtain this funding.

MR. REGELIN, noting that this year Alaska will receive \$3.88 million in state wildlife grants, pointed out that these must be matched with state funds either at the 3-to-1 or 1-to-1 level, depending on the project. He conveyed his strong belief that it is in Alaska's best interest to expand these three programs. He explained:

[To] ensure the long-term continuation of hunting and trapping throughout the nation, we need to have an educated and an informed public. And a lot of these funds will be used to expand programs in our school systems so that kids can understand the role of humans in the natural systems, and for the older students, for the role of hunting.

There are numerous anti-hunting groups that have or are in the process of developing education programs that they're pushing hard to get into our school systems. And we need to provide an alternative. And we're doing this across all of the states right now.

Number 1430

MR. REGELIN said many adults who have a strong desire to learn about wildlife management and wildlife species urge the department to provide more programs including hunting, viewing, and outdoor-skills clinics. Suggesting that some of this funding could be used for that, he said this bill would provide the necessary match to the federal dollars in order to have a strong fish-and-wildlife educational program in Alaska. There also is a need to collect more information on species that aren't hunted or trapped. "We have the responsibility to manage all wildlife species in Alaska," he remarked, noting that of Alaska's 485 species of birds and mammals, 45 are hunted and trapped. He offered the following:

Each year, various states and the U.S. Fish and Wildlife Service [are] petitioned repeatedly by, basically, anti-development groups to list ... many species as threatened or endangered. Most of these species aren't in any trouble, but ... we lack data about their population size and distribution. And because of that lack of information, some get listed. But even if they don't, it ... slows everything down; it takes a lot of time and money to fight ... and go out and get that information. And this bill would provide ... the funds for us to get ahead of that

curve and collect the needed information on species of special concern, ... to keep them from getting listed ... if it's not necessary.

Number 1312

MR. REGELIN continued:

The other thing the bill would do is provide funds to expand the department's just-beginning program in wildlife viewing. I think it would be a great help to the tourist industry by enhancing opportunities for people to see wildlife. I think the best tourist marketing in the world is ... to send home happy and satisfied customers to tell their friends and neighbors that they should visit Alaska.

Also, the wildlife-viewing programs have a significant economic potential for economic development in rural Alaska. Many tourists are eager to visit small villages and view the wildlife, see the lifestyle. And villages that choose to develop a program that [caters] to these visitors could make a lot of money or at least have some income in that village. They just need a little help to get started, and we can do that through this program, with small grants and expertise to help them get started.

MR. REGELIN said he can't believe a \$15 fee will keep anyone from coming to Alaska, and offered his belief that it will enhance rather than hurt the tourism industry. He related his experience, from talking to people across the state for many years, that "most of them ... don't mind paying a small fee for good wildlife management and enhanced viewing opportunities."

Number 1209

MR. REGELIN suggested two changes to the bill. First, he wouldn't exempt Alaskans from the fee. He explained:

Remember, if a person buys a hunting or a fishing license, they're already exempt, and it's only fair that the nonconsumptive users pay their share, because they put a lot of demands on the division and the department, and they want services that cost money. And hunters and fishermen have been paying the entire

bill for many, many years, and it's time for everybody to step up and pay their share.

MR. REGELIN further suggested it would remove the constitutionality problem with regard to the commerce clause if everyone were charged. Second, he proposed changing the effective date to January 1. He explained the difficulty for the department of buying the license stock and getting it printed, for example. He estimated that with a January 1 date, it still would bring in 40 percent of the revenue for FY 04.

MR. REGELIN concluded by saying the department doesn't need the \$8 million he believes this fee will generate, but only needs about \$3 million to match the federal funds. Acknowledging that [general] funds cannot be dedicated and may be used for something else, he suggested that the sponsor statement from the Office of the Governor shows a strong commitment to using these funds to provide that match. He expressed confidence in the legislature, especially since he said this will be identified as a separate account within the general fund. He offered his belief that the department's estimates for the fiscal note were conservative.

Number 0983

SARAH DUNLAP testified, noting that she and her husband own a small guiding business primarily involved in wildlife-viewing opportunities. Pointing out that this definitely will affect her business, she said she believes the idea has merit and should be discussed, but emphasized the need for the legislature to move carefully and slowly, rather than rush this as a mechanism to increase the revenue stream for the budget.

MS. DUNLAP conveyed three concerns about the bill. First, instituting it midseason this year will unduly burden businesses that provide wildlife-watching opportunities, she said, noting that her business already is committed to its clients for this year to provide a guiding service that includes all the necessary permits and fees. Therefore, if the pass is instituted this summer, it will tax her business, rather than the viewers themselves. She suggested it would be difficult to explain [to customers] and institute in the short term. She emphasized the desire to take time to put this forward as a state so that visitors to Alaska are aware of it [ahead of time].

MS. DUNLAP addressed her second concern. She requested a possible exemption for areas visited by wildlife viewers that already are under a particular "fee demo program." For example, her business primarily takes people to Pack Creek to view bears, which is under this program and has a fairly hefty fee of \$50 per adult during the peak season. She reported that the 225 visitors her business took to Pack Creek last year paid a total of about \$4,730 in fees, and thus the clients already pay a significant fee for wildlife viewing opportunities.

MS. DUNLAP explained her third concern: it won't be fair if the revenue generated by the bill mostly will disappear into the general fund and not truly go to enhancing watchable-wildlife programs, for habitat conservation, or for promoting Alaska as a tourism destination.

Number 0733

REPRESENTATIVE KERTTULA asked whether most smaller operators provide services for a flat fee that takes care of everything.

MS. DUNLAP said she believes so; it is easier to sell a package that includes all the services. She expressed concern even as far as incorporating this in the future, noting that her business is trying to hold the line with regard to rising insurance and fuel costs, for example. There is a certain feeling for what can be charged, she explained, "and we personally feel like we work pretty close to that." Therefore, she suggested that any fees like this will be split between the business and the visitor. For wildlife viewing, she offered her belief that many operators are like her husband and herself, with small, family-owned or moderate-sized, Alaska-based businesses. She proposed that this tax will fall more heavily on small businesses than on the larger companies, and that smaller businesses are more likely to be engaged in wildlife viewing.

Number 0583

REPRESENTATIVE GATTO asked whether Ms. Dunlap charges her clients Juneau's sales tax. He also asked whether she generally would advertise the trip as "the cost plus tax and fees."

MS. DUNLAP replied that her company's trips take place outside the borough and aren't subject to the sales tax. If she had to deal with it, however, she surmised that she would roll it into the total cost, since she doesn't break down other costs. In

response to a question from Representative Lynn, she specified that the 5.5-hour guided tour [to Pack Creek] costs \$475 per person and includes all fees, guiding by naturalists, and the flights. She voiced concern about pushing that cost any higher.

Number 0442

BOB JANES, Owner, Gastineau Guiding Company, informed members that his company generally takes people on day hikes in [the Juneau area]. He suggested that people at some time would be willing to support this kind of a wildlife conservation pass, but said this bill scares him - it is premature and the ramifications haven't been considered thoroughly. Asking why it applies only to commercial operators, he suggested all visitors to Alaska should pay for the pass, because they come to Alaska to view and enjoy the wildlife. Reporting that his company includes sales tax in Juneau in its net price, he said none of the taxes or trail-use fees are broken out and shown separately; this would be a tax to the company as a commercial operator, he said. Acknowledging that it is a tough question, he suggested considering residents as possible viewers and enjoyers of Alaska's wildlife as well.

MR. JANES also expressed concern about where the funds will go and how this will be administered. Speaking in support of money to gain federal matching dollars to help enhance wildlife programs, he suggested it is unfair to push the burden onto commercial tour operators, and that perhaps it could be challenged in the long run. With regard to how it will be administered, Mr. Janes offered his experience that if it is enacted quickly, it will be a nightmare to collect the fees and figure out how to get them [to the state]. He pointed out that for his company's tours, some people arrive on cruise ships and some by plane.

MR. JANES spoke against applying this only to commercial operators. He asked how it will be assessed fairly if someone takes a \$4,000 tour, as opposed as someone who pays for a \$30 hike from his company. He questioned how that would balance out, noting that people who go up on the [Mount Roberts Tramway] pay \$22 for that, and would have to add another \$15, nearly doubling the price.

**TAPE 03-17, SIDE A**

Number 0001

MR. JANES said he didn't necessarily oppose a wildlife conservation pass, which in the long term could have good implications for a state like Alaska, but offered his belief that such legislation hasn't passed in other states "because it scared them too," since there are real operational and other reasons that this hasn't been instituted in other states with wildlife.

REPRESENTATIVE GATTO asked Mr. Janes whether he'd support it if the cost were "15 percent of the fee or \$15, whichever is less."

MR. JANES said he'd think about it. He added that if it is only applied to commercial operators, he believes there will be a need to balance it out, based on the price of different tours and experiences. Foremost, he said, he believes that all visitors should pay it, not just those who choose to go out on a commercial trip.

REPRESENTATIVE GATTO asked whether Mr. Janes would support it if it cost less.

MR. JANES replied, "If you can convince me that only commercial operators should be paying it, then I guess I would support it. But ... I don't believe that only commercial operators should be paying it. At this point, I believe all visitors - if we're going to have a pass - should be paying it as well."

Number 0204

MR. JANES, in response to a question from Co-Chair Fate, said the majority [of his clients] now are from the cruise ships, although the company is working hard to develop new "products" for independent visitors because of having been told that it is the market that the Juneau Convention & Visitors Bureau (JCVB) is hoping to bring to Juneau, since those people are spending "overnight dollars" staying at hotels, eating at restaurants, and so forth.

Number 0277

CO-CHAIR FATE asked Ms. Dunlap whether many people in her business come from the cruise ships.

MS. DUNLAP answered, "Not the majority." [The remainder of her answer was indiscernible on tape.]

CO-CHAIR FATE conveyed his desire to move the bill from committee that day. He asked that testifiers limit their comments to about three minutes.

Number 0344

REPRESENTATIVE KERTTULA pointed out that this will have a lot of impact on her constituents, and said there are major issues, including constitutional and tax questions, as well as how to help smaller operators. She expressed hope that the bill would be considered at more than one hearing. She then asked how Gastineau Guiding Company books tours.

MR. JANES said it is a mix. The tours can be purchased on the cruise ships, from the company's web site, or through walk-up sales at the counter in Juneau. The company does sales in probably five different venues, he said, noting that other travel agents sell his company's tours as well.

REPRESENTATIVE KERTTULA asked whether the target market is independent travelers or locals who want the educational aspect.

MR. JANES replied, "We're there to provide education to people that want it. ... We don't feel as a commercial operator that we should be penalized, or penalize our customers that are there to get ... educated by a professional in the field." He said he thinks the independent market is the one that will affect most operators in Alaska, because of the direct competition [for] travelers who come to Alaska on their own and are trying to decide whether to spend money on a tour. "And \$15 doesn't sound like much," he explained. "But if adds another \$15 to a \$60 tour, they're going to think twice about whether they want to go out on that tour or whether they want to do it on their own. And that's going to be lost revenue ... in many ways."

Number 0531

REPRESENTATIVE KERTTULA, noting that Mr. Janes has been an operator for a long time and has extensive Alaskan knowledge, asked him whether the independent market is what Juneau and Southeast Alaska are trying to target. She noted that there is a great cruise ship industry in Southeast Alaska already, but a desire for a bigger independent market.

MR. JANES offered his belief that the independent market is crucial in Juneau, since it brings money to other businesses in Juneau.



Number 0607

REPRESENTATIVE GATTO asked whether most people who arrive in Juneau on a cruise ship have stopped somewhere else [in Alaska] beforehand.

MR. JANES surmised that 90 percent have. In further response, he agreed that many cruise ship passengers would be taking more than one excursion.

REPRESENTATIVE GATTO suggested that such a person already would have a pass.

Number 0680

GEORGE H. REIFENSTEIN JR., General Manager, Mount Roberts Tramway, noted that Mount Roberts Tramway is wholly owned by Goldbelt, Incorporated ("Goldbelt"), the urban Native corporation for the Juneau area. He indicated that of the 180,000 to 200,000 visitors who take the tramway yearly, about 60 percent are off cruise ships; others are independent travelers who have arrived by ferry or airplane, and often people go on the tram with family members who live in Juneau. Indicating Goldbelt also operates Glacier Bay tours and cruises, as well as cruises out of Ketchikan, he said the company is making forays into the tourism market. He remarked:

What we see are very tight operating margins. And particularly in recent years, we see visitors on a budget. You just need to look around at what's going on in, particularly, May and ... September, and you'll see that the people up here are on very tight budgets; they're choosing their tours very carefully. We've seen in recent years where a tour that was \$100 for a short cruise, say, down to ... Tracy Arm, was taken up by \$15 and that elasticity wasn't there for the public. And, consequently, numbers considerably fell off in the following year.

Number 0788

MR. REIFENSTEIN noted that his company already has this year's pricing information out, as others had testified similarly. He mentioned bird watching, whale watching, and hiking as being fairly low-priced, and confirmed that the tram ticket costs \$22; adding \$15 [for the proposed pass] would create a real sales

challenge, resulting in great erosion for the company and precluding the ability to make necessary payments on the \$17-million facility. He told members:

This is obviously a targeted measure that one would call a "head tax." Tourism is already struggling in this state. We're losing our market share. We have this problem where we aren't getting the word out to enough ... of the public out there in America, Europe, wherever. And tourism has been flat, ... and many, many venues are not seeing much at all.

This year, we're looking at a lot of uncertainty, given ... the state of just international affairs. And ... something like this [pass] could significantly tip the scale. [All] it takes is a negative article [in] one of the big New York papers or East Coast papers, and people start -- you know, we don't look real good. We don't need that in the tourism industry right now. We're trying to do the right thing here. We're the second-largest private employer in the state. And we believe that ... the money that's coming in through these tourism dollars does funnel down around the state. And we would just ask for due consideration as this progresses.

Number 0947

REPRESENTATIVE GATTO asked whether perhaps people who pay the \$15 might take additional trips because of not having to pay the fee again.

MR. REIFENSTEIN said he didn't know.

Number 1056

REPRESENTATIVE WOLF referred to Mr. Reifenstein's figure that 60 percent of those using the tram are off cruise ships. He asked whether these people already would have purchased the pass [elsewhere].

MR. REIFENSTEIN said no, indicating that a number of people who ride the cruise ships don't get off in port; he cited weather as one factor. Noting that people on a budget may wander around and select one tour, if any, he added, "They are not all going on tours, and they aren't all doing something in every port." He said it's very different from the way it used to be. In

response to a comment from Representative Wolf, he expressed hope that the price structure of the tramway will be enough to entice those people who do leave the ship.

Number 1084

REPRESENTATIVE GATTO asked where the [typical] independent traveler in Southeast Alaska is from and what that person does.

MR. REIFENSTEIN said there are a lot of demographic studies, but noted that a lot of people come from Washington, Oregon, California, Florida, New York, and Illinois, as well as from across the United States. Some years, he noted, a lot of Italians visit, for example; there are variations in the foreign visitors, which he suggested depends on how the currency is valued against the U.S. dollar.

REPRESENTATIVE KERTTULA asked whether tramway tickets are sold through the cruise line itself, and whether the company gets the same return on such a ticket.

MR. REIFENSTEIN explained that the company has an arrangement with the cruise lines, which go to work to sell the tickets on board for a commission. Some travelers may opt not to buy on the ship, however, and may come directly to his company's desk.

Number 1184

REPRESENTATIVE KERTTULA inquired about any occasions when prices have gone up [on shore] without the ability to raise the same prices on the ships. She also asked whether that risk exists with a fee such as this.

MR. REIFENSTEIN noted that insurance prices have doubled this year for many in the industry; he indicated that must be absorbed by the industry, since the prices are set already. In response to a further question, he added, "We probably have five to ten people a day who call in and request information, and we send that pricing information out to them; so we've already told them what the price is for this year."

CO-CHAIR FATE announced the intention of hearing from a testifier present from out of town; he expressed hope that testifiers on teleconference that day would be able to participate at the next hearing on Monday, March 17.

Number 1346

MARK MORONES, Communications Director, Alaska Travel Industry Association (ATIA), told members that many of the points he'd intended to make had been stated already by testifiers, since ATIA has about 1,000 members and represents businesses from those the size of cruise [lines] to mom-and-pop operations. He said ATIA's membership includes a lot of small businesses that he believes would be directly impacted by HB 163: 92 percent of its membership is [from businesses of fewer than] 50 people, and 50 percent is [from businesses of fewer than] 5 people.

MR. MORONES acknowledged the significant state fiscal concerns and expressed appreciation for the efforts of the administration and the legislature to control spending and identify new funding sources. However, he said that's about as far as he could go in supporting this particular bill. He pointed out that from a marketing perspective, the bill fosters a negative perception of the state. As the person who oversees [ATIA's] public relations contract, Mr. Morones cited testimony that this nonconsumptive-user fee is a novel concept. Also pointing out the media's tendency to remember unique things, he said this isn't the type of message he wants to present to the national market of potential visitors to Alaska.

Number 1497

MR. MORONES reported that ATIA has concerns about the administration and policing [of the proposed pass], many of which had been mentioned [by other testifiers]. He also concurred with Mr. Reifenstein's characterization of this as a targeted tax, saying the statewide association is against it because it appears punitive in nature and goes against the perception of Alaska as a destination. Suggesting it also is divisive with respect to various sectors of the industry that ATIA represents, he said:

We have been, as an organization, much more amenable to the concept of broad-based taxes that would evenly impact, across all sectors. We think that's probably, from our standpoint, the fairest way that we can go ... and have everybody bear ... the cost of potential revenue-generating devices.

Number 1619

MR. MORONES emphasized the desire to increase the market share in Alaska through generating additional funding for [ATIA's]

tourism-marketing program. With regard to what the broad-based funding mechanism could be, he said the board is looking at that now, and will probably go to the administration and legislature soon with some concepts about distributing that burden fairly among various sectors in the communities. Acknowledging the challenge of finding a solution, Mr. Morones expressed confidence that there are potentially better solutions as far as the amount of revenue that could be generated.

MR. MORONES pointed out that the fiscal note for HB 163 indicates there is 5 percent industry growth. However, he cited a study conducted by [the McDowell Group] that looked by region across Alaska, "through ATIA members and non-ATIA members," and showed that growth has flattened out; he suggested the last time there was 5 percent growth was probably 1997. He mentioned 3.1 percent [growth] in 1999, 0.8 percent in 2000, and 0.16 in 2001; he offered the belief that it was flat in 2002. He suggested that although the cruise industry had increased capacity through moving more vessels from the Mediterranean and Europe, increasing capacity by 12 percent, the actual increase in people being brought up [to Alaska] was 4 percent. "We've seen a significant decline in non-cruise traffic," he added, reiterating the belief that there is a better mechanism to generate revenue. He expressed the desire to be at the table for that discussion. He specified that ATIA doesn't support this [wildlife conservation] pass.

Number 1766

CO-CHAIR FATE asked when ATIA proposes to take the package that its board has been working on to the governor.

MR. MORONES replied, "We're waiting for the ... details right now." He said there are a lot of voices to be heard on this, and expressed hope that it would be fairly soon. He reiterated that the board is actively working on it.

Number 1806

REPRESENTATIVE KERTTULA recalled that the marketing structure had been changed completely, and that the state does little toward it, whereas ATIA has taken it over.

MR. MORONES explained that ATIA is a consolidation of the ATMC [Alaska Tourism Marketing Council], the Alaska Visitors Association, and components of the "division of tourism." He said one concept envisioned in the "millennium plan" was looking

to increase tourism marketing overall "by reaching a point of \$10 million, which is our marketing budget for this year."

MR. MORONES reported that 60 percent of that budget comes from [ATIA's] private membership - from membership fees, \$2 million in voluntary contributions from the cruise lines, and about \$900,000 from "our convention and visitor bureaus." Noting that the industry has seriously taken on the challenge of seeing what it can do to expand the marketing message, he remarked:

Quite frankly, we have just about ... tapped the level of contribution that we can ask of our members and be able to provide to them the kind of [cooperative] marketing programs that they can participate in, bearing in mind that the majority of our members are pretty small [businesses], and that's why they're part of our association, is to be able to leverage onto that big marketing picture. So [as] a part of that deal over these last few years, we have increased our contribution and the state has decreased its contribution. So we have \$6 million in order to generate the \$4-million match from the state.

Number 1906

MR. MORONES concluded:

Under the current operating budget, that is where we would be at again for the coming fiscal year. And so, one of the concerns that we do have ... when we've seen ... the proposal for the conservation pass and the suggestion of a seasonal sales tax [also proposed by the governor] that would generate \$35 million in revenue for the state - that's a potential double hit to our industry, without seeing any kind of return to our marketing program.

So we realize that there's a lot more movement ... to go toward some sort of sustainable funding source. We don't think that HB 163 is that vehicle, but ... we would like to be at the table to meaningfully participate in those conversations.

Number 1950

CO-CHAIR FATE thanked participants, suggesting there might be areas in which the bill could be improved. [HB 163 was held over.]

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:07 p.m.